

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 587 of 2001

Wednesday, this the 6th day of November, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. P.K. Kanakamma,
D/o late C.I. Krishnan,
Junior Engineer (E&M),
Office of the Chief Engineer, Navy,
Naval Base PO, Cochin-682 004Applicant

[By Advocate Mr. O.V. Radhakrishnan]

Versus

1. Engineer-in-Chief,
Army Headquarters, New Delhi.
2. Chief Engineer,
Southern Command, Pune-1
3. Union of India,
represented by its Secretary,
Ministry of Finance (Defence),
New Delhi.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 6-11-2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant on the death of her husband was appointed on compassionate grounds in relaxation of the normal Recruitment Rules as Superintendent (E&M) Grade-II under the 2nd respondent. On the date of appointment she possessed Bachelor's degree in Engineering, which is the essential qualification for appointment to a Group A post. However, she was appointed on a Group C post. In terms of the Government of India, Ministry of Defence letter dated 4-2-1969 as also the Government of India, Ministry of Defence letter dated 2-6-1971, a person possessing the higher qualification of Degree in

Engineering, which is the requisite qualification for recruitment to a Group A post, appointed to a Group C post was eligible for 3 advance increments as an incentive. Coming to know that persons similarly situated as the applicant filed OA No.755/1997 before the Ernakulam Bench of the Central Administrative Tribunal and obtained the benefit of 3 advance increments, the applicant submitted a representation on 18-2-2000 (Annexure A-15) and followed it up with a further representation dated 19-8-2000 (Annexure A-16). The applicant from Annexure A-17 letter dated 10-11-2000 came to know that the matter was still under consideration. However, finding that the applicant is not being given the benefit of advance increments, the applicant has filed this Original Application for the following reliefs:-

- "i. to declare that the applicant, who was appointed and taken on strength as Superintendent E/M Grade-II as per Order dated 04-07-1988 possessing Degree in Engineering (Electrical) at the time of appointment is entitled to the financial benefits of three advance increments allowed under Annexures A-5 and A-6;
- ii. to issue appropriate direction or Order, directing the respondents to grant the applicant the financial benefits of three advance increments admissible under Annexures A-5 and A-6 in the light of the declaration in regard to the very same issue in Annexure A-13 Order of this Honourable Tribunal;
- iii. to issue appropriate direction or Order, directing the respondents to disburse the arrears on account of grant of three advance increments in terms of Annexures A-5 and A-6 within a time frame which may be fixed by this Hon'ble Court;
- iv. to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case; and
- v. to award costs to the applicant."

2. Respondents in the reply statement contend that while under Annexure A5 and A6 the benefit of three advance increments was given to employees possessing higher

(

qualification of Degree in Engineering, the same was withdrawn with effect from 1-12-1973 by order dated 18-3-1974 and that, therefore, the applicant is not entitled to the benefit. It has further been stated that on a consideration of the entire issue the Government has evolved a scheme for grant of lumpsum incentive to those who have acquired higher qualification even after 1-12-1973. The applicant, according to the respondents, is entitled only to the lumpsum incentive and not the three advance increments as claimed by her.

3. The applicant has filed a rejoinder, wherein it is stated that the Bangalore Bench of the Tribunal had in a batch of cases, i.e. OA Nos. 1421 and 1428 to 1439 of 2000, following the ruling of the Ernakulam Bench of the Tribunal, granted the relief to persons similarly situated like the applicant, that in the case of one applicant before the Bangalore Bench, namely K.P.Sudhakaran, the respondents have issued orders (Annexure A-19) granting him the benefit and, therefore, there is no grace in the respondents contending that the benefit is not available to the applicant.

4. We have gone through the pleadings and materials placed on record and have heard Shri O.V.Radhakrishnan, learned counsel of the applicant and Shri C.Rajendran, SCGSC appearing for respondents.

5. That incentive of three advance increments was given to persons appointed to Group C posts, but possessing higher qualification of Degree in Engineering, on the basis of Annexure A5 and A6 orders, is not disputed. The only contention of the respondents to deny the claim of the applicant is that the benefits stands withdrawn with effect from 1-12-1973, in view of Annexure A-10 letter dated

(Signature)

18-3-1974. The impact of the letter dated 18-3-1974 on the entitlement of persons who had acquired higher educational qualification while in service was considered by the Ernakulam Bench of the Tribunal in the judgement in OA No.755/1997. Adverting to the contentions, the Bench observed as follows:-

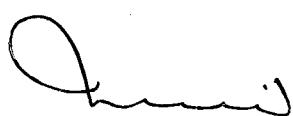
"8. According to the respondents as per R-5(A), A-3 order granting advance increments has been withdrawn. From R-5(A) dated 18.3.74, it is seen that A-3 order has been withdrawn. But, in R-5(B), it is stated that all Ministries and Departments are requested to convert the existing increment based incentive already sanctioned to their employees into one-time lumpsum incentive with immediate effect in Phase-I. R-5(B) is dated 31.1.95. If R-5(A) order was in force as on the date of issue of R-5(B), it would not have been stated therein that all the Ministries/Departments are requested to convert the existing increment based incentive (emphasis supplied). When the words existing increment are used in R-5(B), it is only to be taken and understood that R-5(A) order was not in force as on 31.1.95, the date on which R-5(B) was issued. A-5 dated 3.6.96 will also go to show that as R-5(A) order was not in force as on 1.4.93, since A-5 says that the order contained in R-5(B) is applicable from the financial year 1993-94 and the person who was granted advance increments prior to the financial year 1993-94 will continue to draw two advance increments and persons who have qualified in higher qualification examination on or after 1.4.93 only are to be granted lumpsum amount as incentive under the new scheme. So, it is clear from A-5 that those persons who have qualified in the higher qualification examination i.e., graduation in Engineering (Civil) prior to 1.4.93 are entitled to three advance increments."

6. Bangalore Bench of the Central Administrative Tribunal, as seen from Annexure A-18, has followed the decision of the Ernakulam Bench of the Tribunal in OA NO.755/1997. From Annexure A-19 it is seen that one of the applicants before the Bangalore Bench was given the benefit. We are in respectful agreement with the view taken by the Ernakulam Bench of the Tribunal in OA No.755/1997 that Annexure A-10 letter dated 18-3-1974 was never brought into action. Therefore, agreeing to the view of the Ernakulam Bench in OA No.755/1997, we hold that the applicant in this case is also entitled to the incentive of three advance increments.

~

7. In the result, the Original Application is allowed declaring that the applicant, who was appointed as Superintendent (E&M) Grade-II while possessing the Degree in Engineering (Electrical) at the time of appointment, is entitled to the benefit of three advance increments from the date of her appointment allowed under Annexure A5 and Annexure A6. We direct the respondents to grant the applicant the advance increments with effect from the date of her appointment with consequential financial benefits arising therefrom as has been granted to the applicants in OA No.838/2001. The above direction shall be complied with and payment made to the applicant within a period of three months from the date of receipt of a copy of this order. No costs.

Wednesday, this the 6th day of November, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

Ak.

- 6 -
APPENDIX

Applicant's Annexures:

1. A-1: True copy of the Memo No.65926/1186/EIC dated 27.5.1988 of the 1st respondent.
2. A-2: True copy of the Memo No.120052/BJ/11/EIB(S) dated 10.6.1988 of the Chief Engineer Cochin Zone, Naval Base, Cochin.
3. A-3: True extract copy of the Part II Order dated 4.7.1988 of the BSO, Garrison Engineer.
4. A-4: True copy of the Degree Certificate dated 16.1.76 of the Vice Chancellor, University of Kerala.
5. A-5: True copy of the letter No.96850/V-1967/DTTA/884/D (Crv-I) dated 4.2.1969 of the Ministry of Defence, Government of India.
6. A-6: True copy of the letter No.96850/V-1967/DTTA/4709/D (Crv-I) dated 2.6.1971 of the Ministry of Defence, Government of India.
7. A-7: True copy of the letter No.3(2)69/7315/D(Civ-1) dated 5.9.1972 of the Ministry of Defence, Government of India.
8. A-8: True copy of the letter No.1/2/89-Estt (Pay-I) dated 28.6.1993 of the Department of Personnel, Training.
9. A-9: True copy of the letter No.140301/1/554 dated 3.6.96 of the 2nd respondent.
10. A-10: True copy of the letter No.3(1)73/2236/D(Civ-I) dated 18.3.1974 of the Ministry of Defence, Government of India.
11. A-11: True copy of the OM No.1/2/89-Estt.(Pay-I) dated 31.1.95 of the Ministry of Personnel, Public Grievances and Pension.
12. A-12: True copy of the ID letter No.15(3)/93/D (CWT) Vol. dated 21.4.95 of the Ministry of Defence, Government of India.
13. A-13: True copy of the Order dated 7.10.1999 in O.A.No.755/97 of the Central Administrative Tribunal, Ernakulam Bench.
14. A-14: True copy of the letter No.PC-90237/6176/EIC (LEGAL-O)/407/CAT/D dated 30.3.2000 of the Ministry of Defence, Government of India.
15. A-15: True copy of the representation dated 18.2.2000 of the applicant to the 2nd respondent.
16. A-16: True copy of the representation dated 19.8.2000 of the applicant to the 1st respondent.
17. A-17: True copy of the letter No.170109/2/Engg/EIR (Pay Coord) dated 10.11.2000 of the 2nd respondent.
18. A-18: True copy of the Order No.1421 & 1428 to 1439/2000 dated 9.1.2001 of the Hon'ble Central Administrative Tribunal, Bangalore Bench.
19. A-19: True copy of the Special Part II Order dated 15.9.2001 issued by the Chief Engineer (N), Kochi.

Respondents' Annexure:

1. R-1: A true photocopy of the letter No.85610/10/Incentive/CSCC/3338/D(wks), dated 13.12.2000, issued by Deputy Secretary to the Govt. of India.

npp
28.11.02